

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000031

FILED: _____

MARIO TAPIA ESPINOZA

SCOTT C SILVA

v.

STATE OF ARIZONA

CARRIE M COLE

FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on June 26, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Scottsdale City Court, and the excellent Memoranda submitted by counsel.

The only issue submitted is whether the trial judge erred in granting the Defendant's Motion to Dismiss Count 1 on December 3, 2001. Appellee, Mario Tapia Espinoza, was charged on June 10, 2001 with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1), and several civil traffic

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violations. The trial court has correctly summarized the circumstances of what transpired after Appellee's arrest:

The Defendant was transported to the police department and permitted to call his attorney at 2:20 a.m. During that call to his attorney, Defendant told the police officer he wished an independent blood sample. The police told the defense attorney that the Client would be released at 4:00 a.m. When the attorney arrived to pick up his Client, he was informed that the Client could not be released without a bond being paid of one thousand six hundred dollars(1,600.00). The attorney returned at 5:00 a.m. with the bond money but was now told the Client would not be released until after he was transferred to the County Jail and the bond posted there. The Defendant was probably in Scottsdale police custody until 10:30 or 11:00 a.m. Clearly, past the time for getting an independent test.¹

Citing Van Herreweghe v. Burke², Appellant contends that the trial court erred in granting Appellee's Motion to Dismiss. However, the trial judge correctly concluded:

The Defendant in this case told the officers he wanted an independent blood test. Such a test was not able to be arranged because the police gave the defense attorney incorrect information as to when the Defendant would be released. The defense attorney reasonably relied upon this information.³

¹ Order of 3 December, 2001, record on appeal from Scottsdale City Court.

² 201 Ariz. 387, 36 P.3d 65 (App.2001).

³ Order of 3 December, 2001, record on appeal from Scottsdale City Court, at page 2.

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And, the trial judge concluded when "the State interferes with Defendant's efforts to obtain a blood sample, due process require(s) dismissal of the charges (citations omitted).⁴

This Court finds no error in the trial court's conclusions or analysis of the applicable case law.

IT IS THEREFORE ORDERED affirming the Scottsdale City Court order dismissing Count 1 in this case.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for any future and further proceedings in this case, if any.

⁴ Id.